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ABSTRACT

Separate schools were introduced into Ontario between 1841 and 1867 when Upper Canada was joined with Lower Canada to form the United Province of Canada. The school acts of 1841 and 1843 outlined the basic arrangements by which either a Roman Catholic or a Protestant minority might establish a dissenting separate school board. Since the School Act of 1863 (usually referred to as the Scott Act), the separate school question has focused on two major issues: (1) the appropriate division of tax monies between the public and separate school systems; and (2) the involvement of separate schools in secondary education. The Tiny Township legal case of 1926-1928 resolved that Roman Catholic separate schools had no automatic constitutional right to offer the full range of secondary education. Subsequent Roman Catholic campaigns for full funding of secondary education have taken a political rather than legal route. (Author/BZ)

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Abstract

Separate schools were first introduced into Ontario during the 1841-1867 period, when Upper Canada (Canada West) was joined with Lower Canada (Canada East) in a legislative union known as the United Province of Canada. School acts of 1841 and 1843 outlined the basic arrangements by which either the Roman Catholic or the Protestant minority in a local municipality might establish a dissenting separate school board. Subsequent acts over the next twenty years clarified and extended the arrangements.

The School Act of 1863 (usually referred to as the Scott Act) is considered of crucial importance, since it was the final piece of separate school legislation prior to Confederation. With Confederation, section 93 of the British North America Act provided a constitutional guarantee for all separate school rights existing in law at the time. Because of the imprecise division between elementary and secondary schooling at this time, a number of Roman Catholic separate schools, like their common school counterparts, were offering the equivalent of the first two years of high school instruction.

Since Confederation, the separate school question has focused on two major issues: the appropriate division of tax monies between the public and separate school systems, and the involvement of separate schools in secondary education.

Acts passed by the provincial Legislature in 1899 and 1908 gave legislative sanction to the pre-Confederation practice of permitting separate schools, along with their public school counterparts, to offer instruction at the Fifth Book and continuation school level. The Tiny Township legal case of 1926-1928, however, resolved that Roman Catholic separate schools had no automatic constitutional right to offer the full range of secondary education. Subsequent Roman Catholic campaigns for full funding of secondary education have taken a political rather than legal route.

I. Chronological Outline of Development

1841 An Act to make Further Provision for the Establishment of Common Schools Throughout the Province
(4 & 5 Victoria, Chap. 18)

(Often referred to as the Day Act, as the bill was introduced into the Legislative Assembly by Solicitor General Charles Day).

Section 11 specified that "any number of inhabitants of a different faith from the majority in such township or parish might choose their own trustees" and "establish and maintain one or more common schools" under the same conditions and receive the same government support as other common schools.

Section 16 provided that boards of examiners named by the Governor to manage common schools in towns and cities might be divided into Roman Catholic and Protestant groups, each responsible for conducting schools to be attended by children of its own faith.

Significance:

- the act applied to both parts of the United Province of Canada (Canada East and Canada West);
- the act extended the principle of dissenting schools from Canada East into Canada West;
- dissent was not confined to Roman Catholics and Protestants, but was available to those of "a different faith", presumably any Protestant denomination and any non-Christian group;
- provision for state-supported Roman Catholic schools in Upper Canada caused less debate than did the Church of England campaign for its own state-supported schools and inter-denominational rivalry among Protestants over Bible reading in common schools;
- schools established under section 11 qualified for provincial grants in the same manner as all other schools recognized by this act; there was no legislative provision until 1850 for municipalities to levy a local property tax for school support.

1843 An Act for the Establishment and Maintenance of Common Schools in Upper Canada
(7 Victoria, Chap. 29)

(Often referred to as the Hincks Act, as the bill was introduced into the Legislative Assembly by Sir Francis Hincks).

Section 55 allowed that "in all cases, wherein the teacher of any such school shall happen to be a Roman Catholic, the Protestant inhabitants shall be entitled to have a school with a teacher of their own religious persuasion, upon the application of ten or more resident freeholders or householders of any school district, or within the limits assigned to any town or city school . . . . And in like manner, when the teacher of any such school shall happen to be a Protestant, the Roman Catholic inhabitants shall have a separate school, with a teacher of their own religious persuasion, upon a like application".

Section 56 described the means of establishing boards of trustees for such "separate" schools, prescribed that each would be "entitled to receive its share of the public appropriation" based on pupil population, and required that all such "separate" schools be subject to the provisions laid on common schools in general.

Significance:

- the act applied only to Upper Canada (Canada West);
- the act is regarded as "the foundation of all subsequent laws governing the separate schools of Canada";
- the act provided that separate schools might be either Protestant or Roman Catholic, but they were no longer open to individual Protestant denominations;
- the act provided that the establishment of a common school district must precede any separation.

1846 An Act for the Better Establishment and Maintenance of Common Schools in Upper Canada
(9 Victoria, Chap. 20)

(Referred to as the Common School Act of 1846)

Changes made in separate school clauses were merely verbal; for example, the term "school section" was substituted for "school district". Otherwise, the clauses concerning separate schools in the 1843 act were repeated verbatim.

Significance:

- the act was the first piece of educational legislation passed during the administration of Egerton Ryerson, Chief Superintendent of Education for Canada West.

1847 An act for Amending the Common Schools Act of Upper Canada
(10 & 11 Victoria, Chap. 19)

The final decision as to the establishment of a separate school in a city or town was transferred to the municipal council. Previously, "ten or more freeholders or householders" could establish such a school on their own.

1850 An Act for the Better Establishment and Maintenance of Common Schools in Upper Canada
(13 & 14 Victoria, Chap. 48)

(Referred to as the Common School Act of 1850)

Section 19 referred to "separate schools for Protestants, Roman Catholics, or coloured people".

The number of petitioners needed for separation was raised from ten to twelve resident heads of families.

The obligation on the part of the local municipal authority to act on such a petition was made mandatory.

Average attendance replaced average enrolment as the basis for determining the government grant.

1851 An Act to Define and Restore Certain Rights to Parties Therein Mentioned
(14 & 15 Victoria, Chap. 3)

Allowed separate schools to be established in each ward of a city or town. Prior to the passage of this act, Toronto City Council had refused the application of Roman Catholics for a second school in the municipality.

1853 An Act Supplementary to the Common School Act for Upper Canada
(16 Victoria, Chap. 185)

Separate school supporters were declared exempt from local common school property taxes if the separate school board had instituted its own local property tax scheme.

1855 An Act to Ammend the Laws Relating to Separate Schools in Upper Canada
(18 Victoria, Chap. 131)

(Referred to as the Taché Act, as the bill was introduced into the Legislature by Etionne Paschal Taché, a Cabinet member from Canada East).

No longer could municipal councils exercise any delay in setting up a local separate school or separate school board; trustees now dealt directly with the Chief Superintendent of Education for Upper Canada.

Significance:

- the significance of the act lay in how it was passed, rather than what it said;
- although the legislation applied only to Upper Canada, it was introduced into the Legislature by a member from Canada East and was passed on the strength of Canada East votes;
- the act left a legacy of bitterness in the minds of the more militant Upper Canada Protestants.

1863 **An Act to Restore to Roman Catholics in Upper Canada Certain Rights in Respect to Separate Schools**
(26 Victoria, Chap. 5)

(Referred to as the Scott Act, as the bill was introduced into the Legislative Assembly by Richard Scott, member for Ottawa).

Villages, like towns and cities, were enabled to have separate schools in each ward.

Union separate school sections were allowed in rural districts of the province.

The act permitted the employment in Canada West (Upper Canada) of teachers with Lower Canada (Canada East) qualifications.

Significance:

- the act forms the basis of today's separate schools, since the British North America Act, in guaranteeing minority educational rights, made permanent all the advantages granted to separate school supporters in this act;

- again, the act, while applying only to Canada West, was passed on the strength of Canada East votes;

- considerable controversy developed in later years as to whether the participants in the 1863 debate regarded the Scott Act as a "final settlement" of the separate school question;

- separate schools operating under the provisions of the Scott Act could, like their common school counterparts, offer instruction through to the end of the Fifth Book or Fifth Class, approximately to the end of what today would be consisered Grade 10; there was at this time no sharp division between elementary and secondary education.

1867 An Act for the Union of Canada, Nova Scotia, and New Brunswick, and the Government thereof; and for Purposes connected therewith
(30 & 31 Victoria, Chap. 3)

(Referred to as the British North America Act, 1867, an act of the British parliamant)

Section 93: "In and for each Province the Legislature may exclusively make Laws in relation to Education, subject and according to the following Provisions:

(1) Nothing in any such Law shall prejudicially affect any Right or Privilege with respect to Denominational Schools which any Class of Persons have by Law in the Province at the Union".

Significance:

- separate school provisions existing by law in Ontario at the time of Confederation were given a constitutional guarantee;

- there was little controversy over section 93 at the various Confederation conferences or in the legislature of the United Province of Canada; most participants regarded it as a necessary aspect of the Confederation bargain; Quebec's Protestant minority and Ontario's Roman Catholic minority were guaranteed certain school rights;

- subsequent disputes were not so much over whether separate schools should lose any right or privilege, but whether they should be allowed to extend their operations with public support along with the rest of the formal school system;

- restrictionists have argued that the BNA Act defined both minimum and maximum provisions, and that no further concessions should be made; extensionists have argued that it was unreasonable to suppose that the framers of the act intended to freeze the development of separate schools in the face of changing needs of society.

1871 An Act to Improve the Common and Grammar Schools of the Province of Ontario
(34 Victoria, Chap. 33)

(Referred to as the School Act of 1871)

Common schools were now to be called public schools.

Grammar schools were brought fully into the publicly supported educational system and were renamed either high schools or collegiate institutes. All local taxpayers, whether public or separate school supporters at the elementary level, were required by law to support, with their taxes, secondary education as regulated under this act.

Significance:

- by failing to clearly differentiate between elementary and secondary education, this act allowed elementary schools, whether public or separate, to continue offering what were then known as Fifth Classes or Fifth Book Classes or the Fifth Form - roughly the first two years of secondary school instruction, approximately corresponding to Grades 9 and 10 today.

1879 An Act Respecting Public, Separate and High Schools
(42 Victoria, Chap. 34)

Permission was granted to establish Roman Catholic model schools for training third-class teachers.

Roman Catholic owners of unoccupied land in a municipality could now have this land assessed for separate school support, without regard to the owners' place of residence.

Municipal assessors were permitted to assess a person as a separate school supporter merely on the basis that they knew personnally that the ratepayer was a Roman Catholic.

1882 Administrative Regulation

Roman Catholic separate schools were given their own school inspector, whose duty was to inspect and assess some two hundred schools employing nearly four hundred teachers.

Significance:

- the regulation extended the principle of separation; previously, individual inspectors throughout the province had inspected all schools, both public and separate, within their own districts.

1886 An Act Respecting Separate Schools
(49 Victoria, Chap. 46)

Tenants could direct that taxes on property they occupied should go to the support of separate schools.

The act made it possible (but not mandatory) for business corporations to apportion a share of their municipal taxes to separate schools, according to the percentage of their Roman Catholic shareholders.

The act permitted the use of municipal machinery in collecting separate school taxes.

The act provided that trustees of a separate school board in a municipality where a high school existed might name a representative to sit on that high school board.

1890 An Act to Amend the Public and Separate Schools Act
(53 Victoria, Chap. 71)

This act repealed the 1879 provision that an assessor could place any known Roman Catholic on the separate school list. Now ratepayers, as before, had to give notice in writing that they wished to be separate school supporters.

Significance:

- the act reasserted the principle earlier established that every ratepayer was in the first instance a public school supporter unless he indicated otherwise.

1896 An Act Consolidating and Revising the Public School Acts
(59 Victoria, Chap. 70)

Section 8 enabled the school corporation of any municipality or section where there was no high school to establish a continuation class for pupils who had passed the public school leaving examination.

Significance:

- the act gave legislative authorization to the long-standing local practice of offering Fifth Class work through public schools.

1899 An Act to Improve the Laws Respecting Public Schools
(62 Victoria, Chap. 36)

Section 1 extended the right to operate continuation classes to separate school boards. "The school corporation of any municipality or section in which there is no high school shall have power to establish in connection with the public or separate school over which it has jurisdiction, such courses of study in addition to the courses already provided for the fifth form of the public schools as may be approved by the regulations of the Education Department. The classes established under such courses shall be known as Continuation Classes".

Significance:

- this provision was repeated in 1902 legislation, and in 1906 it was enacted that public and separate school boards might unite to form continuation classes.

1899 Act to Amend the Separate Schools Act
(62 Victoria, Chap. 37)

This act allowed ten or more Roman Catholic heads of families to establish a separate school board - even though there might not yet be a public school board - in "any portion of the Province not surveyed into townships".

Significance:

- the provisions of the act violated the principle that separate schools were a "separation from" something already established;

- four years later, this privilege of setting up separate schools de novo was extended to "unorganized" townships; that is, townships that, although they had been surveyed, had remained without municipal officers;

- this legislation was of particular importance to Northern Ontario.

1907 An Act Respecting the Qualification of Certain Teachers
(7 Edward VII, Chap. 52)

This act provided that members of religious communities teaching in Roman Catholic separate schools must possess the same qualifications as public school teachers.

Significance:

- members of religious orders had to obtain provincial certification as lay teachers did - by attending approved teacher-training institutions.

1908 An Act Respecting Separate Schools, Fifth Classes and Continuation Schools
(8 Edward VII, Chap. 68)

Continuation classes were divided into either Fifth classes (to the end of today's Grade 10) or continuation schools (to the end of today's Grade 12), but were still only allowable in municipalities or sections where no high school existed.

The powers of separate school trustees with reference to the establishment of Fifth classes and continuation schools were made the same as those of public school trustees.

Significance:

- this legislation led to the expansion of Fifth classes in separate schools. These were always regarded as elementary grades, even when they followed the same curriculum as Grades 9 and 10 in the high schools. Government grants were paid accordingly; that is, at the elementary, rather than the secondary, rate;

- the act led to the formation of two continuation schools by separate school authorities, at Westport and Eganville; both schools voluntarily closed on 30 June 1967, and their boards voluntarily ended operations on 31 December 1967;

- the Hope Report (p.476) concludes that "The Separate Schools Act of 1863, and therefore the British North America Act of 1867, did not give the right to Roman Catholics to establish continuation schools, continuation classes or Fifth classes. Such rights were conferred in 1899 and 1908".

1913 An Act Respecting Separate Schools
(3 & 4 George V, Chap. 71)

Section 66(3) offered an easier way for corporations to direct a portion of their local property taxes to separate schools. New provisions required only that the proportion of tax money allocated to separate school support must not be greater than the proportion of Roman Catholic shareholders. It was no longer necessary to determine the exact number or proportion of shareholders.

Significance:

- the legislation was still permissive rather than mandatory on the corporations;

- public utility taxes were still not accessible to separate school boards.

1928 The Board of Trustees of the Roman Catholic Separate Schools for School Section Number Two in the Township of Tiny
(Ontario Law Reports, 1926; Canada Law Reports, 1927; Law Reports, Appeal Cases, 1928)

(Referred to as the Tiny Township case)

The Judicial Committee of the Imperial Privy Council in London, England (then the highest court of appeal in Canadian law) rejected a plea from the trustees of RCSSS No.2, Tiny Township, in which they had claimed the following rights: to operate their own secondary schools; to be exempt from municipal taxation for the support of secondary schools other than their own; and to receive provincial government grants for their secondary schools.

Significance:

- this case settled any doubts as to the constitutional rights of Roman Catholic separate school boards to operate secondary schools.

1936 An Act to Amend the Assessment Act
(1 Edward VIII, Chap. 4)

Corporations able to list separate school supporters among their shareholders were now required, rather than permitted as in earlier legislation, to submit to the municipalities where they were located, the ratio of the assessment that these shares represented (for the purpose of separate school financial support), provided the shareholders in question had filed a notice with the company.

Corporations unable to classify their shareholders in this way, were to have their taxes divided according to the ratio of the assessment of individuals in the community, as divided between public and separate schools.

Significance:

- this act was the first really significant financial and legislative concession since the Scott Act of 1863;

- the proportion of corporation taxes was to be divided according to ownership or assessment, but not according to attendance;

- separate school boards were still denied access to public utility taxes;

- the act proved so unpopular politically, and so difficult administratively, that it was repealed in the next session of the legislature by An Act to Repeal Chapter 4 of the Statutes of Ontario, 1936 (1 George VI, Chap. 9).

1950 Report of the Royal Commission on Education in Ontario, 1950. (Hope Report)

The report proposed a reorganization of grade structures from an 8/5 elementary/secondary arrangement to a 6/4/3 primary/intermediate/senior arrangement, with separate schools being restricted to the first six years.

Significance:

- the commission's scheme for reducing the elementary program to six years involved cutting back the sphere of operations of separate school boards. It is doubtful that such a change could have been made in accordance with the terms of the BNA Act, even though the majority of the commissioners seemed to think it could;

- several members of the commission supported a minority report that protested against these recommendations. The resulting controversy overshadowed other aspects of the Hope Report, and helped to prevent the adoption of many of its basic proposals.

1963 An Act to Amend the Separate Schools Act (11 & 12 Elizabeth II, Chap. 132)

This act provided that the centre of the three-mile radial zone that circumscribed separate school districts in rural areas be changed from the school site to any site so designated by the separate school board. Only Roman Catholics residing within this three-mile radial zone could choose to direct their property assessment to the support of the separate school.

1964 Ontario Tax Foundation Plan

The plan formalized the growing tendency toward provincial school grants as equalization grants, with the object of guaranteeing to each school board in the province, sufficient revenue for the adequate financing of the educational program it considered essential and sufficient to meet the needs of its own community, while at the same time maintaining its responsibility to the taxpayers that elected it.

The equalization grants were intended to help compensate for differences in local ability to support education by increasing as local wealth decreased (or vice versa) and by varying from board to board and from year to year.

Significance:

- the plan was of particular assistance to separate school boards, many of whom operated on very small assessment and tax bases; it brought most separate school boards up to the financial level of most public school boards, though some differences remained;

- though it gave way in five years to a newer scheme that was regarded as more appropriate for the reorganization of the province into larger school boards, the Ontario Tax Foundation Plan's principle of financial equalization through provincial grants has been retained.

1968 An Act to Amend the Separate Schools Act
(17 Elizabeth II, Chap. 125)

This act created larger units of Roman Catholic separate school administration, to parallel the creation of county boards of education in the public school sector.

Sixty-one larger Roman Catholic separate school districts replaced 499 small districts.

Significance:

- most of the new units had boundaries not coterminous with those of the county public boards.

1969 Equal Opportunity for Continuous Education in Separate Schools of Ontario
(Brief presented by the Ontario Separate School Trustees' Association, 26 May 1969)

This brief called for full funding of Roman Catholic separate schools to the end of high school.

Significance:

- The Ontario New Democratic Party supported the "Equality" brief in its 1969 published statement, The Financial Crisis in the Catholic High Schools;

- the Ontario Liberal Party supported the brief in its 1970 published statement, Statement of the Liberal Caucus Regarding Separate Schools;

- Premier William Davis opposed the brief, thus formally denying the extension of funding, in a 1971 published statement, The Merit and Value of a Single, Universally Accessible, Publicly-Supported Secondary School System.

1974 The Education Act
(23 Elizabeth II, Chap. 109)

Sections 79 to 133 dealt with Roman Catholic separate schools; sections 134 to 145 with Protestant separate schools.

Section 132(1): "Every separate school shall share in the legislative grants in like manner as a public school".

Section 138(2): "Every Protestant separate school shall share in the legislative grants in like manner as a public school".

Significance:

- the act consolidated previous educational legislation into one major act; no major changes were made in separate school provisions.

1978 Weighting for Grades 9 and 10 Roman Catholic Separate School Pupils
(Administrative Regulation)

Provincial legislative grants for Grades 9 and 10 separate school pupils, heretofore calculated as elementary school grants, were now given a certain weighting.

Weighting increased from 1.10 in 1978 to 1.23 in 1985; the resulting per = pupil grants increased from 77.6 per cent of equivalent secondary school grant in 1978 to 90.0 per cent in 1985.

Significance:

- for grant purposes, Grades 9 and 10 in the separate schools became less like elementary grades and more like secondary grades.

1980 The Education Act
(29 Elizabeth II, Chap. 129)

Sections 79 to 136 dealt with Roman Catholic separate schools; sections 137 to 148 with Protestant separate schools.

Significance:

- this is the education act currently in effect in Ontario; it contains no significant changes in separate school provisions from the 1974 Act; subsequent amendments in 1981 and 1982 have not touched the sections dealing with separate schools.

1982 An Act to Give Effect to a Request by the Senate and House of Commons of Canada
(31 Elizabeth II, Chap. 11)

(Referred to as the Constitution Act or the Canada Act - an act of the British Parliament)

Section 15(1): "Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability".

Section 15(2): "Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability".

Section 29: "Nothing in this Charter abrogates or derogates from any rights or privileges guaranteed by or under the Constitution of Canada in respect of denominational, separate or dissentient schools".

1984 Statement by the Honourable William G. Davis, Premier of Ontario, on Education Policy, to the Legislative Assembly of Ontario, Toronto, 12 June, 1984

The statement was an announcement of full funding of Roman Catholic separate school education through to the end of high school, beginning with funding to the Grade 11 level in September 1985, Grade 12 in 1986, and Grade 13 in 1987.

II. Narrative Account:

(a) The Pre-Confederation Years

From 1841 to 1867, through an act of the British Parliament, the former Province of Upper Canada (Ontario) was joined in a legislative union with Lower Canada (Quebec) under the name of the United Province of Canada. Within this new union, Upper Canada became known officially as Canada West, and Lower Canada as Canada East. All legislation proceeding through the Legislature of the United Province was subject to voting by members from both parts of the colony, regardless of whether the bill in question dealt with the entire region or only one of its parts. A simple majority of the Legislature was sufficient for any piece of legislation; thus Canada East members helped determine specific Canada West measures, and vice versa.

Education was one matter requiring the urgent attention of the first Parliament of the United Province of Canada when it met in June 1841. Governor Sydenham was determined to act immediately in this area, not only to alleviate the supposedly deplorable state of education, but also to devise a unified school jurisdiction for both the Canada East and the Canada West sections of the newly created province. Solicitor General Charles Day thus introduced a bill "to make further provision for the establishment and maintenance of common schools throughout the Province".

The act was an important part of a larger scheme to create a new cultural union of the province according to Lord Durham's 1839 recommendations. But it was rendered unworkable by the fact that each section of the union had over several decades evolved quite distinct educational structures. Nevertheless, a genuine effort was made to arrive at provisions that would allow the act's acceptance in both regions. The crucial clause in this regard was section 11, which made provision for "separate schools" without once mentioning the term. It provided that "any number of inhabitants of a different faith from the majority in such township or parish might choose their own trustees" and "might establish and maintain one or more schools" under the same conditions as other common schools.

Contemporary accounts indicate that this separate school clause was not part of the original bill, but was added at the committee stage. That the committee consisted of seven more members from Canada East than from Canada West has often been alluded to as the reason for the clause's inclusion. However, the most forthright appeals for separate schools came not from Roman Catholics, but from Protestants. Most of these appeals were from Church of England and Presbyterian clergymen who were disturbed by the absence of any mention of religious education in the common schools. The predominant view among Protestant petitioners was perhaps best expressed by William Morris, a spokesman for the Church of Scotland, when he warned that "if the use by Protestants of the Holy Scriptures in their schools is so objectionable to our fellow subjects of that other faith, the children of both religious persuasions must be educated apart." At the same time, John Strachan, Anglican Bishop of Toronto, plunged into a determined though unsuccessful campaign to ensure the creation of a system of separate, publicly supported Church of England schools.

Roman Catholic claims to separate schools in Canada West were registered, soon after the 1841 legislation became operative. Roman Catholic schools had been functioning in Upper Canada for many years. The first such school, using French as the language of instruction, had been opened at Fort Frontenac in 1676; the first English Catholic school was established in 1804 at St. Raphael's in Glengarry County. The prime force behind the early move for English Catholic education was Rev. Alexander Macdonnell, who became Bishop of Regiopolis (Kingston) in 1826, and a legislative councillor five years later. Because of his sympathy for the conservative and anti-American views of the Family Compact, Macdonnell managed to gain government grants for his ventures and a free hand in running them - just as other denominations had in an era characterized by many private schools supported by voluntary subscriptions and fees. The 1841 act in effect gave legal sanction to these schools fostered by Macdonnell.

The failure of the School Act of 1841 - for a variety of reasons other than its provisions for religious dissent - led to its repeal by the Common School Act of 1843, which applied only to Canada West. Here

the principle of separate schools, first accepted two years earlier, was continued, though it was now restricted to Roman Catholics and Protestants rather than being open to any "different faith". The term "separate schools" was actually used in the provisions of this act, which became the basis of all subsequent laws governing denominational minority schools in Upper Canada. Now a separate school could be established in any school district on the application of ten or more resident householders representing the Roman Catholic (or Protestant) minority.

Separate schools had thus been legally sanctioned for five years when Egerton Ryerson became Superintendent of Education for Canada West in 1846. On numerous occasions he had made known his opposition to separate schools in principle because of the challenge they presented to the common schools. However, as he stated in his 1847 report, "I was not prepared to condemn what had been unanimously sanctioned by two successive parliaments." Consequently, in the Common School Act of 1846 there were no significant changes in separate school provisions. Ryerson was himself convinced that, given time, separate schools would "die out, not by force of legislative enactment, but under the influence of increasingly enlightened and enlarged views of Christian relations, rights and duties between different classes of the community."

The Common School Act of 1850, while raising from ten to twelve the number of resident householders necessary for a separate school application, was most significant for opening up a new category of separate school - schools for "coloured people". Here the impetus came from the Black minority, whose children were excluded by the White majority from attending common schools in a number of Upper Canadian centres. This new provision led to the opening of several "coloured" separate schools in the southwestern part of the province. Although the last such de jure coloured separate school closed in 1917, it was not until mid-1960s that the enabling legislation and the last de facto coloured school vanished from Ontario.

Prior to 1852, the separate school question had not been a contentious issue. Ryerson had continually pointed to the limited demands for separate schools, a demand he was certain would fade into insignificance as the benefits derived from his system of common schools became apparent. By the late 1840s, the number of both Catholic and Protestant separate schools was actually in decline - from forty-one in 1847 to thirty-two in 1848. Ryerson himself considered the year 1852 to be the turning point. Until then, he told the Legislature, "separate schools were never advocated as a theory, much less a doctrine, and still less an article of faith." But for the next fifteen years the issue threatened to tear apart the province.

The controversy was fueled by a number of factors, both internal and external: the Catholic side witnessed the conservative papacy of Pope Pius IX; the Canadian hierarchy tended toward ultramontanist positions on church-state relations; and the militant Armand de Charbonnel was appointed Bishop of Toronto. These factors were reinforced by a continuing stream of Irish Catholic immigration into the province. Militancy, however, was not confined to one camp; a Protestant anti-Catholic crusade was roused by George Brown, editor of the powerful Toronto Globe, and it was warmly endorsed by the ever-increasing, largely Irish Protestant, Loyal Orange Lodge.

The expansion of separate school privileges began with the School Act of 1853. The provisions of this act brought the separate schools more in line, in financial terms, with the common schools. Separate school supporters were relieved of paying common school taxes, bringing an end to double taxation. Each separate school was allowed to share in the provincial grant, although not in the municipal one. Separate school trustees were granted corporate status and allowed to collect their own rates or fees.

Bishop Charbonnel, however, remained unsatisfied. He now launched a campaign to attain for the Catholic minority of Canada West the same educational advantages enjoyed by the Protestant minority in Canada East - complete independence to run their own publicly financed school system. In vain, Ryerson tried to point out the differences between

the school systems of the two sections: Canada East possessed a dual confessional system, whereas Canada West had a national system of which denominational separate schools were an integral part. Finally, in response to pressures exerted by the Catholic bishops of Toronto, Kingston, and Bytown (Ottawa), yet another school bill was brought before the Legislature in 1855.

This bill was first introduced into the appointed Legislative Council, not the elected Assembly, by Etienne Paschal Taché, Receiver General for Canada East, even though the bill applied only to Canada West. The bill was put to a vote so late in the session that most of the Canada West members had left Quebec for home, believing that all serious legislative business was over. Despite George Brown's violent objections, the vote was pressed in the Assembly by John A. Macdonald. Members for Canada West voted 11 to 8 against the bill; the 46 members from Canada East voted unanimously in favour. To many Upper Canadians, the charge of Lower Canadian domination seemed to ring true.

The Taché Act of 1855 further strengthened the position of separate schools in Canada West. Now, ten resident Roman Catholic freeholders could set up a separate school by electing three trustees and notifying the municipal authorities of their action; the local municipal council could no longer impede or delay the process. From this point onward, the number of separate schools rose annually and began to match the increasing Catholic immigration into the province. In 1855 there were 41 separate schools, five years later there were 115, and by Confederation 161. Those 161 separate schools in 1867 enrolled 18,924 students, employed 210 teachers, raised $26,781 on local property taxes, and received $9,529 in provincial grants.

A final pre-Confederation separate school bill was enacted in 1863. This was the famous Scott Act, proposed by Richard William Scott, Roman Catholic member for Ottawa. Scott presented his bill each year for four years until it finally passed - again because of the solid Canada East vote. Although the bill's terms were not particularly radical, the Canada West Protestant majority, with the exception of government supporters, stood opposed to the bill. In the

final vote in 1863, it passed with a majority of 76 to 31 though the Canada West vote was 31 to 21 against.

The act marked a further consolidation of the separate school position in Canada West. Separate schools could now receive a share of municipal as well as provincial grants; procedures for establishing separate schools were eased in rural areas; teachers with Lower Canada or Canada East qualifications could now be employed in Canda West. In return for these concessions, separate schools had to accept inspection by provincial inspectors, centralized control of curriculum and textbooks, and government control of all teacher training. This act was considered by many to constitute the final settlement of the separate school question. In the course of events, it proved to be the cornerstone of Ontario's separate school system, and no major alterations were made over the years.

In a flurry of activity prior to Confederation, both the Quebec Protestants and the Ontario Roman Catholics tried to improve their respective school provisions. Each side's efforts, however, tended to arouse more opposition than support, with the result that new legislation introduced into the last session of the United Province legislature in 1866 was withdrawn. It was instead agreed that the settlement of 1863 should be embodied in the new federal constitution of the Canadian provinces. Thus, section 93 of the British North America Act stated that nothing in any future provincial law relating to denominational schools "shall prejudicially affect any right or privilege...which any class of persons have by law in the province" at the time of Confederation.

Subsequent disputes in the post-Confederation period arose not so much over whether separate schools should lose any right or privilege, but over whether they should be allowed to <u>extend</u> their operations with public support along with the rest of the formal school system. Restrictionists have argued that the Scott Act and the British North America Act defined both minimum and maximum provisions, and that no further concessions should be made; extensionists have argued that it was unreasonable to suppose that the law-makers of the 1860s intended

to freeze the development of separate schools in the face of changing needs of society.

Finally, in summarizing the pre-Confederation period, it is important to note that a small number of Roman Catholic separate schools, along with their common school counterparts, were offering what was then known as Fifth Book or Fifth Class instruction - what would be considered today as the approximate equivalent of Grades 9 and 10. Although it is impossible to determine the exact number of separate school pupils in these classes, we can obtain clues from the 1866 Report of the Council of Public Instruction, the forerunner of the Department of Education.

First, the 1866 report lists 441 separate school pupils enrolled in algebra, 327 in geometry, and 526 in natural philosophy - all subjects of a rather advanced nature. Second, the report notes, in Ryerson's words, "a gratifying increase" in separate school enrolment "in all the higher subjects of a common school education". By this time a considerable overlap had developed between the upper levels of instruction in the common and separate schools and the lower levels of instruction offered by the grammar schools. This imprecise division between elementary and secondary education would continue to exist in Ontario education in the years following Confederation.

(b) Narrative Account: The Post-Confederation Years

By the mid-1880s nearly 30,000 pupils attended Roman Catholic separate schools in the Province of Ontario. The Scott Act of 1863, reinforced by section 93 of the British North America Act, had guaranteed local separate school boards the right to operate and, through taxation and provincial grants, to support such instruction at the common school level. The School Act of 1871, by failing to delineate sharply and clearly between elementary and secondary education, allowed both separate and public schools to continue offering Fifth Book classes - approximately the first two years of high school.

With the retirement of Egerton Ryerson in 1876, the chief superintendency of education was abolished, and Adam Crooks became Ontario's first Minister of Education. The seven years of Crooks's administration saw a number of small but significant separate school gains: Roman Catholic model schools, easier transfer of Quebec teaching certificates in Ontario, less complicated machinery for Catholic ratepayers to place their names on the separate school tax roll, and the appointment of a Roman Catholic as separate school inspector.

Crooks, his successor George Ross, and Liberal Premier Oliver Mowat staked out a middle position on the separate school question in the 1880s. On one side were Catholic spokesmen calling for full control of Catholic schools on the model of Quebec's dual confessional system; on the other side stood equally militant Protestant opponents who sought the total abolition of separate schools. The Mowat government began by accepting the constitutional reality of separate schools and sought to improve rather than abolish them. As Minister of Education, George Ross often spoke of his responsibility "to promote the efficiency" of separate schools in order to parallel public school improvements. "Our duty is to see whether the changes proposed are wise, prudent, and effectual; and if so, to make them." As far as Ross was concerned, the proper concern of the province was to "protect the liberty of the subject, not to hamper it; to extend where practical, not to curtail."

The Conservative opposition party campaigned vigorously against Roman Catholic schools and French-language schools during the provincial elections of 1886, 1890, and 1894. Anglo-Protestant pressure groups - the Orange Lodge, the Equal Rights Association, and the Protestant Protective Association - also joined the fray. Pressure from such extremists within his own party drove Conservative leader William Meredith toward an increasingly aggressive stance. He opened the 1890 campaign by demanding the repeal of recent separate school amendments and a return to the limited Roman Catholic rights of the 1863 Scott Act.

Each opposition attack proved a failure, however, as the majority of Ontario voters accepted the middle course steered by Premier Mowat and his education ministers. Throughout the 1880s and early 1890s, Mowat repeatedly declared that separate schools were "a fact in our Constitution, and we have to accept them whether we now like it or not." He argued that it was his duty not to curtail the rights and privileges granted to separate schools in 1863 and 1867, but to guarantee that the schools functioned as efficiently as the public schools - thus the various amendments and regulations of the post-Confederation years.

Such changes, combined with continuing Roman Catholic immigration, no doubt helped the separate school system grow in size. During the 1883-1903 period, for example, the number of separate schools increased from 194 to 419, while enrolment grew from 29,199 in 1885 to 57,263 in 1910. Yet, by refusing to sanction Roman Catholic demands for separate textbooks, separate high schools, separate normal schools, and a deputy minister for Roman Catholic schools, Mowat ensured that these schools functioned as an integral part of a unified provincial educational system.

The separate school question abated somewhat during the late 1890s and early 1900s, as the new Conservative leader James Whitney embraced the middle ground once occupied by Mowat and the Liberals. Indeed, after becoming premier in 1905, Whitney endorsed a number of changes designed to improve the efficiency of the separate schools. These included easier arrangements for municipal corporations to direct a portion of their local property taxes to separate school support, and legislative approval for separate school boards to operate Fifth Book classes and continuation schools.

The phrase "continuation class" first appeared in 1896 as a new designation for public school pupils who, although they had passed the public school learning examination, were continuing their studies in the public school; the school corporation of any municipality where there was no high school could establish such a continuation class. Legislation in 1899 extended the right to operate continuation classes

to separate school boards. In 1908, continuation classes were divided into either Fifth Classes (offering instruction to the end of today's Grade 10) or continuation schools (to Grade 12), again permissible for both public and separate school boards, but still only allowed in municipalities or sections where there was no high school.

Such legislation led to an expansion of Fifth Book classes in separate schools. Statistics for 1910 classified 1,018 of the 57,263 total separate school pupils as being "beyond 4th Book". By 1950, some 5,816 of the 127,253 total Roman Catholic separate school enrolment was classified as Grade 9 and 10 pupils.

The 1908 legislation also led to the development of two Roman Catholic continuation schools, at Eganville and Westport. Through the 1910s and 1920s these two institutions offered lower school and middle school work. But the annual reports of the Department of Education show a Grade 13 class at Eganville by 1935 and at Westport by 1940. These classes continued at least through to the end of the 1940s; annual reports beginning in the early 1950s no longer gave detailed statistics on the continuation schools.

But continuation schools remained permissible only in municipalities or sections where no high school existed. Thus, Roman Catholic leaders called for their own full-fledged system of publicly supported secondary education through to the end of high school. Such demands grew as high school enrolment increased in the years after the First World War and after the high school program was reduced from six to five years in 1921. But before the issue of separate high school rights became politically volatile, Howard Ferguson, Conservative premier from 1923 to 1930, manoeuvred it into the judicial arena. From 1926 to 1928, the famous Tiny Township case proceeded through the Ontario, Canadian, and British courts. Finally on June 12, 1928 the Judicial Committee of the Imperial Privy Council decided against the petitioners: Catholics had no legal claim to any public financial support for secondary schools they might erect, or to exemption from support of public high schools. Yet Ferguson kept Catholic support by partially shifting provincial grants from an incentive to an

equalization basis, thus providing more funds for poorer separate schools.

By 1935, a total of 77,928 pupils were enrolled in separate schools, an increase in the separate school proportion of the total elementary population from 10 to 17 per cent since 1900. Finance continued to be the major problem. Large Catholic families and low residential property assessments combined to generate too many pupils and not enough funds. Two possibilities existed for easing the burden: either increased provincial grants or a share of local corporation and utility taxes.

Provincial grants could have been raised without legislation and without risking a heated political debate. But grant increases were not possible in a Depression decade of limited provincial funds. Nor did this approach have the support of the recently formed Catholic Taxpayer's Association (CTA), which campaigned for a permanent, legislated settlement rather than one dependent on the whims of future governments. From its formation in 1932 under the leadership of Martin Quinn, the CTA mounted a consistent lobby for a guaranteed share of local corporation and utility taxes. Legislation of 1886, amended in 1913, had permitted, but not obliged, company directors to pay to separate schools the portion of their school taxes that corresponded to the number of shares in the corporation owned by Catholics. That legislation had no teeth and had proven ineffective. Now in the 1930s the CTA wanted such a division of corporate taxes made mandatory, extended to public utilities, and split on the basis of student population.

George Henry, Conservative premier since 1930, had procrastinated on the CTA demands and had gone down to defeat in the 1934 provincial election. The new Liberal government under Premier Mitchell Hepburn was determined to face the issue, and introduced a Tax Assessment Bill into the 1936 session of the Legislature. Corporations, which hitherto had an option in the matter, were now obliged to divide their school taxes in proportion to the religion of their shareholders. If the corporate ownership was so complex that such a religious census was

impossible, then the taxes would be apportioned according to municipal assessments, not, as Roman Catholics had requested, on the basis of school population. No provision was made for the second Roman Catholic request, a share of public utility taxes. Amid intense Protestant opposition, heated debate in the Legislature, an alleged threat on Hepburn's life, and the revolt of three Liberal members, the Tax Assessment Bill passed on a vote of 65 to 20 at about five o'clock in the morning of 9 April.

Unfortunately for Hepburn and the province's separate school boards, the act proved both practically unworkable and politically contentious. Numerous court cases showed the difficulty of dividing corporate taxes; the East Hastings by-election of December 1936 killed any hopes that Protestant voters might accept the Tax Assessment Act as an economic rather than a sectarian measure. Thus, in the 1937 spring session of the Legislature, Premier Hepburn stunned both Catholic and Protestant voters by announcing his support for repeal of the controversial legislation. His subsequent re-election, as well as the slowly improving economic climate of the late 1930s, enabled Hepburn and his advisers to consider other ways of easing the financial burden on separate school supporters. That assistance would come not by way of tax changes at the local level, but in the less contentious form of provincial equalization grants.

By 1938, the total money committed to provincial school grants surpassed pre-Depression highs; by 1941 it doubled, rising from 10 to 20 per cent of the provincial share of total educational costs. Hepburn justified this move by stating that "the burden of local taxation on real estate may be lightened." In addition, the province was moving away from incentive grants - helping those districts best able to help themselves - toward equalization grants, which channelled more money "to those districts which, by reason of their small assessments, are least able to provide for the financial support of schools". Among the major beneficiaries were the separate school boards, whose local financing had always been weak and whose hopes had been dashed by the repeal of the Tax Assessment Act in 1937. By 1941 the separate schools of Ontario were receiving in provincial grants an

average of 7.3 cents per pupil per day, compared with 5.6 cents for public school pupils.

In common with several other provinces in the postwar years, Ontario chose to study its long-range educational future through the vehicle of a royal commission; this was the Royal Commission on Education in the Province of Ontario, under the chairmanship of John A. Hope, a justice of the Ontario Supreme Court. The most controversial aspect of the Hope Commission's 1950 report was its proposed reorganization of the grade structure of the schools - from the traditional eight/five elementary/secondary split to a six/four/three primary/intermediate/senior arrangement.

The commission's scheme for reducing the elementary program to six years involved cutting back the separate school boards' sphere of operations. It is doubtful that such a change could have been made in accordance with the terms of the British North America Act, although the majority of the commissioners seemed to think it could. At the same time, several members of the commission published a minority report that protested against these recommendations. The resulting politico-religious controversy overshadowed other aspects of the Hope Report and blocked the adoption of most of its basic proposals.

Meanwhile, despite adjustments to provincial grant regulations in the 1940s and 1950s, separate school boards continued to operate at a financial disadvantage. This was due primarily to low municipal assessments on the property of separate school supporters and to the continued inability to share fully in corporation taxes. In 1957, for example, Cornwall separate schools educated 60 per cent of the city's elementary pupils on 30 per cent of the assessment. In October 1962, the Roman Catholic bishops of Ontario presented Conservative Premier John Robarts with a brief calling for "the same advantages, the same rights, and the same opportunity to grow as is enjoyed by our secular counterparts". Specifically they demanded an increased share of corporation taxes and the extension of full provincial funding to the end of Grade 13. The government responded in part through the Ontario Tax Foundation Plan of 1964, which dramatically increased provincial

grants, especially equalization grants. But Premier Robarts would go no further: there would be no increased share of local corporation taxes and no extension of provincial grants beyond Grade 10.

Bolstered by a new argument and what they thought was a new climate of tolerance, Roman Catholic educators in late 1967 started yet another campaign to win financial support for the senior high school grades. Now they employed the phrase "continuous progress" and pointed to recent moves within Ontario education to effect closer elementary-secondary school articulation. They argued that their present tax-supported separate school system, ending at Grade 10, discriminated against Roman Catholic children; it broke their schooling into artificial parts at a time when pedagogical thinking called for a unified structure. Roman Catholic leaders hoped that their recent rise in numbers to become Ontario's largest religious denomination, in addition to the Centennial year's favourable disposition toward minority-group aspirations, would result in success after so many decades of failure.

The campaign began in a moderate way under the leadership of the Ontario Separate School Trustees' Association, with the presentation early in 1968 of their brief entitled "Equal Opportunity for Continuous Education in the Separate Schools of Ontario". But the campaign soon intensified as Roman Catholic teachers, parents, and especially high school students began to participate. By the 1970s, both the Liberal and New Democratic parties had pledged their support to full funding to the end of Grade 13. For month after month William Davis agonized over the issue, first as Minister of Education and then in 1971 as Premier. Finally, on August 31, 1971, Davis said no. Clearly he feared that grants to what he termed "private" high schools would open the door to similar demands from supporters of Jewish, Christian Reformed, and other independent schools.

Meanwhile, Ontario's separate schools continued to expand. Between 1945-46 and 1969-70 separate school enrolments climbed from 108,298 to 413,556 pupils and from 20 to 28 per cent of the total elementary school population. During the same period, the separate

school board's share of total provincial grants jumped, due to the equalization factor, from 14 to 41 per cent. Absolute enrolment growth slowed after 1970, but in relative terms it increased to 35 per cent of the total elementary population, as public school enrolment began to fall. Of particular interest was the increase in separate school enrolment in Grades 9 and 10 - from 21,022 or 5 per cent of the separate school total in 1967, to 37,383 or 9 per cent in 1982. Another 31,881 pupils were attending Roman Catholic private schools in 1983, most of them in Grades 11 to 13.

Beginning in 1978, provincial legislative grants for Grades 9 and 10 separate school pupils, previously calculated as elementary school grants, were now given a certain weighting. That weighting increased from 1.10 in 1978 to 1.23 in 1985; the resulting per pupil grant increased from 78 to 90 per cent of the equivalent secondary school grant. During this period, at least for grant purposes, Grades 9 and 10 in the separate schools became less like elementary and more like secondary grades.

Finally, on June 12, 1984, Premier William Davis announced to the Legislative Assembly the government's intention to extend full funding of Roman Catholic education through to the end of high school. This would begin with funding to the Grade 11 level in September 1985, the Grade 12 level in 1986, and the Grade 13 level in 1987.

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